

# Treatment in a Similar Manner as a State (TAS) For the Purpose of CWA Water Quality Standards

## General Overview

# Two Key Determinations

- Approval of Tribe's eligibility for TAS under CWA Section 518(e)
- Approval of Tribe's Water Quality Standards under CWA Section 303(c)

# Clean Water Act Section 518(e)

- Authorizes EPA to treat eligible tribes similarly to states
- Describes TAS eligibility criteria
- Lists CWA programs for which TAS is available, including water quality standards
- Limited to Reservation areas



# WQS Regulation Implementing TAS Process: 40 C.F.R. § 131.8

- Federal Recognition
- Government carrying out substantial duties and powers
- WQS program pertaining to management and protection of reservation waters
- Capability

# EPA Processing of TAS Application: Basic Steps

- Tribal application
- Notice and comment on assertion of authority
- Notice and comment on proposed findings of fact (non-Tribal member activities/fee lands)
- Internal EPA processing: Regional/HQs interaction
- EPA decision

# Some Important Jurisdictional Considerations

- Authority over waters/areas covered by the TAS application: Reservation boundaries
- Authority over activities in the areas covered by the TAS application: Tribal members/Non-Tribal members



# Take Home Message

- Include jurisdictional considerations in Tribal planning process
- Consider history and status of the reservation
- Consider nature of existing relationships with surrounding state and nonmembers on the reservation
- Prepare information supporting Tribal authority over areas and activities covered in a TAS application